THE LAW OF CAPACITY IN INTERNATIONAL MARRIAGES.

ONE of the most intricate questions that can arise out of the conflict of laws is that of the validity of international marriage; and the effect of invalidity is so disastrous, both materially and morally, that the right solution of the problem is one for which above all others the conscientious lawyer should anxiously seek. Not only is the problem intricate in its nature, but so various are the solutions reached in the different civilized states that no lawyer can safely advise in the matter without some familiarity with the law of each country involved in the marriage.

Marriage is now regarded in all civilized states as a status based upon legal consent of the parties; this consent, however, is not self-operative, but gives rise to the status only as the result of the consent of the proper sovereign power, acting through its law. So far as the parties are concerned, assuming their consent in fact, nothing further is required for a valid marriage but their capacity to give a legal consent; this capacity of parties is the greatest difficulty involved in determining the validity of an international marriage.

There is a fundamental difference between the common law and the civil law of Europe in their conception of personal capacity. The common law regards a man as a natural creature; if he is alive, if he has a mind and exercises it, if he is a free and independent being, the law accepts him as such. A few cases are, to be sure, dealt with artificially: an infant, though he may in fact have a consenting mind, is incapable of contracting; a married woman, though she may in fact be the moving spirit of the family, is dealt with as under her husband's coercion; a corporation, though in fact an aggregation of individuals, is dealt with as a single entity. These are recognized as exceptions to the general rule, based upon reason, but technical and arbitrary. In European countries, on the other hand, natural facts and powers of human life are nothing to the law until the law makes them so. If the law will, a man lives; if it so decree, he dies before the law, though his natural life continues unchanged. If the law endows him with power to speak, to will, to act, he may effectively do so; if not, then so far as legal results go, his speech is inarticulate, his will a mere

thought, his act is as if never done. Until the law gives a man any capacity, he is not regarded as possessing it. Civil capacity, in short, is altogether a creature of the law, and is dependent, therefore, upon some law having conferred it. Once conferred, the capacity to act becomes a status, continuing until taken away again by the proper law, as may happen by civil death, interdiction, or bankruptcy. This doctrine has been most forcibly defended by Professor Pillet.[1]

"A law once applied to a person," he says, "should be continuous if it is to have every real quality of law. Suppose it ceases to apply to a person when he leaves his own country, or that it only remains inapplicable to such of the person's property as is situated in a foreign country, and it will be clear that the law misses its object because it misses continuity of effect. . . . One can see that if, in the case of the same person, a period of complete incapacity is followed by a period of limited capacity, all the results that the legislator might attain by the rules he established will be forever compromised by the breach of continuity which will be produced in the application of the rule."

Since civil capacity is a status, it must (according to this view) be conferred by the proper law, which is the law of the sovereign who has power over the status. Down to the French Revolution that sovereign was regarded in all European states as the sovereign within whose territories the individual was domiciled; status (including capacity) was governed by the law of the domicil. The framers of the Code Napoléon,[2] however, adopted the law of the nation to which the man owed allegiance, rather than that of his domicil, as the source of his civil rights; and the change has been successively adopted in most of the European codes of the nineteenth century. Belgium and Holland received the Code Napoléon directly; Italy adopted its principles in the Code of 1861;[3] Spain in the Civil Code of 1889;[4] and finally the German empire in the Civil Code of 1900.[5] In most European states, therefore, capacity, once regulated by the law of the individual's domicil, is now regulated by the law of his nation. This doctrine, so clearly set forth in the codes and the treatises of the continent, and stated as if it were to be applied in all cases, is nevertheless subject to many exceptions when actually applied by courts in litigated

[1] 21 Clunet's Journal du Droit Internat. Privé 417.
[2] Section 3.
[3] Preliminary Dispositions, § 6.
[4] Art. 9; so Mexico, Civil Code, Art. 12.
[5] Art. 7.

cases. Where the capacity created by the law of the status appears to be for the benefit of citizens of the forum, the doctrine is rigorously applied ; but where it would operate to the fraud, or even to the disadvantage of citizens of the forum, the courts are quick to find an exception. Thus, in the case of De Lizardi *v.* Chaize,[1] where the defendant was an infant by his own law, though he would have been of age in France, the Court of Cassation said : —

"It is proper in applying the foreign statute to enforce restrictions and limitations without which there would be constant danger of error or surprise to the prejudice of French citizens. Though on principle one is bound to know the capacity of the person with whom one enters into a contract, the rule cannot be so strictly and rigorously applied with regard to foreigners contracting in France. Civil capacity may in fact be easily verified in the case of transactions between French citizens; but it is otherwise as to transactions that take place in France between Frenchmen and foreigners. In such a case, the Frenchman cannot be held to know the laws of various nations, and their provisions as to minority and majority and the extent of the power of foreigners to make agreements within the limits of their civil capacity. It is sufficient for the validity of the contract that the Frenchman has acted without laches and negligence and in good faith."

And in the similar case of Fourgeaud *v.* Santo Venia,[2] the Court of Paris said : —

"Though the laws which govern the status and capacity of persons follow those persons wherever they go, whatever be their domicil of origin, yet one must remember that the application of the foreign statute is subject to restrictions and limitations required by the legitimate interest of citizens of France who have become such by regular banking operations."[3]

Indeed, the Supreme Court of Hanover in 1846 stated the rule very much as an American court would now state it.[4]

"The rule must always be, that a court shall decide according to the law of the land. The exception to this rule, based solely on peculiar

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[1] Jour. du Palais, 1862, 427 ; printed in translation in 2 Beale's Cases on Conflict of Laws 34.

6 Clunet 488; 2 Beale's Cases 35.

[3] *Acc.* Cussac *v.* Hartog (Paris, 1883), 10 Clunet 290. In a similar case the Civil Tribunal of the Seine said: "It is a principle of natural law and of the public order of France that no one shall enrich himself at the expense of another; such a rule, like laws of police and of safety, binds, without distinction of origin or nationality, all who are on French soil." 14 Clunet 178.

[4] Manager of the Court Theatre of Hanover *v.* G., 13 Seuffert's Archiv 10; 2 Beale's Cases 33.

usage, according to which the minority of a foreigner is determined by the law of his domicil, cannot be extended in the decisions so as to cover the legal consequences of such minority. The effect of the defendant's agreement, attacked as the contract of a minor, is therefore to be determined by our law."

Such modifications of the express provisions of a code by judicial decisions should always be borne in mind in dealing with foreign codes.

The common law, on the other hand, considering that individuals are by nature endowed with capacity to act, looks at each act and judges the effect of it in view of all its circumstances, including the natural capacity of the particular individual. If, considering all these circumstances, the law, within the jurisdiction of which the act was done, gives it legal effect, no other consideration enters into the case. The question whether consent in fact by a party is legally effective is, therefore, to be determined by the law which has jurisdiction over the act of giving consent, that is, by the law of the place; capacity to act, in short, is determined by the law of the place of the act. Judge Story puts the matter with his usual clearness and accuracy:[1] —

"In regard to questions of minority or majority, competency or incompetency to marry, incapacities incident to coverture, guardianship, emancipation, and other personal qualities and disabilities, the law of the domicil of birth, or the law of any other acquired and fixed domicil, is not generally to govern, but the *lex loci contractus aut actus*, the law of the place where the contract is made, or the act done;" and again,[2] "although foreign jurists generally hold that the law of the domicil ought to govern in regard to the capacity of persons to contract; yet the common law holds a different doctrine, namely, that the *lex loci contractus* is to govern."

So, too, Chief Justice Gray in Milliken *v.* Pratt:[3] —

"It has been often stated by commentators that the law of the domicil, regulating the capacity of a person, accompanies and governs the person everywhere. But this statement, in modern times at least, is subject to many qualifications; and the opinion of foreign jurists upon the subject, the principal of which are collected in the treatises of Mr. Justice Story and of Dr. Francis Wharton on the Conflict of Laws, are too varying and contradictory to control the general current of the English and American authorities in favor of holding that a contract which by the law of the place is recognized as lawfully made by a capable person, is valid every-

[1] Conflict of Laws, § 103. [2] Ibid. § 241. [3] 125 Mass. 374.

where, although the person would not, under the law of his domicil, be deemed capable of making it."[1]

This doctrine was until recently the unquestioned law of England;[2] but a tendency is now apparent to hold that capacity depends upon the law of domicil. The first English authority for this doctrine is a dictum of Cotton, L. J., in Sottomayor *v.* De Barros:[3] "It is a well recognized principle of law that the question of personal capacity to enter into any contract is to be decided by the law of domicil." One cannot speak of this dictum otherwise than as an ignorant error; indeed, Sir James Hannen, in dealing with the same case subsequently in the lower court, said:[4] —

"It is of course competent for the Court of Appeal to lay down a principle which, if it formed the basis of a judgment of that court, must, unless it should be disclaimed by the House of Lords, be binding in all future cases. But I trust that I may be permitted without disrespect to say that the doctrine thus laid down has not hitherto been 'well recognized.' On the contrary, it appears to me to be a novel principle, for which up to the present time there has been no English authority. What authority there is seems to me to be the other way."

In the latest case on the subject[5] it was left undecided by what law capacity is to be governed. Lord Halsbury, it is true, said explicitly, but obiter, "Capacity to contract is regulated by the law of domicil." Lord Watson expressly declined to decide the point; and Lord MacNaghten, the third member of the court, said: "Perhaps in this country the question is not finally settled, though the preponderance of opinion, here as well as abroad, seems to be in favor of the law of the domicil." In view of these expressions, it is impossible to state the present English law with any confidence; but it is a curious fact that the tendency appears to be to adopt a rule already abandoned in most of the European countries.

Such are the general principles upon which the capacity of

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[1] In France also, until changed by the whim of the codifiers, the law appears to have been the same. Thus in 1624 the Court of Paris upheld a marriage between a Frenchman and a woman of Lorraine, contracted in Lorraine and valid according to the law of that place, though the consent of the man's parents, required by the French law, was not obtained. This, it was said, "was not to be considered, since the marriage was celebrated in Lorraine, a sovereign principality, where the edicts and ordinances of our kings are not observed." If the marriage were invalid, "it would be prodigious and monstrous, since the marriage would be good and valid in Lorraine, and the child legitimate; in France merely concubinage, and the child a bastard." 1 Journal des Audiences 16.

[2] Male *v.* Roberts, 5 Esp. 163.

[3] 3 P. D. 1.

[4] 5 P. D. 94.

[5] Cooper *v.* Cooper, 13 App. Cas. 88.

parties is regulated; but the capacity to marry is perhaps otherwise governed, since it has to do with a relation which is undoubtedly a status. In England, whatever may be the law as to capacity in general, there can be no doubt that capacity to marry is now governed by the law of the domicil. In this case also the English law has only lately taken such a position. In the earlier cases it was treated as unquestioned law that the capacity to marry, like any other question connected with the validity of the marriage, is governed by the law of the place of celebration. This rule was first laid down in connection with Scotch marriages entered into by English minors. In the case of Dalrymple *v.* Dalrymple,[1] Sir William Scott said:—

"The only principle applicable to such a case by the law of England is that the validity of Miss Gordon's marriage rights must be tried by reference to the law of the country where, if they exist at all, they had their origin. Having furnished this principle, the law of England withdraws altogether, and leaves the legal question to the exclusive judgment of the law of Scotland."

Forty years ago, in Simonin *v.* Mallac,[2] Sir Creswell Creswell had to pass upon a marriage celebrated in England between French citizens without the permission of parents, which is required by the French law. He held the marriage valid, saying:—

"In general, the personal competency or incompetency of individuals to contract has been held to depend upon the law of the place where the contract is made. But it was and is contended that such rule does not extend to contracts of marriage, but that parties are, with reference to them, bound by the law of their domicil. This question, of so much importance in all civilized communities, has been largely discussed by jurists of all nations; but they all apply their observations to controversies arising, not in the countries where the marriage was celebrated, but in other countries where it is brought in dispute, and of which the parties were domiciled subjects. That a marriage, good by the law of the country where solemnized, should be held good in all other countries, and the converse, is strongly maintained, as a general rule, by nearly all writers on international law. But, according to the same authorities, it is subject to some few exceptions."

This decision was soon followed by the great case of Brook *v.* Brook.[3] In that case the four Lords agreed that a marriage between an Englishman and his wife's sister, celebrated in Denmark and valid by the law of that country, was void, but they differed in

[1] 2 Hagg. Consist. 54.
[2] 29 L. J. Pr. 97; s. c. 2 Sw. & Tr. 67.
[3] 9 H. L. C. 193.

the reasons given for this decision. Lord Campbell appears to have gone upon the ground that the validity of the contract depends upon "the *lex domicilii*, the law of the country in which the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated," but he alone took that view. The other Lords, though differing on many points, all agreed that the marriage was void, not because the parties were incapable, but because the marriage was forbidden by the law of England, and in fraud of that law. The present English doctrine was first authoritatively stated in the case of Sottomayor *v.* De Barros, already cited, in which Cotton, L. J., said: "As in other contracts, so in that of marriage, personal capacity must depend upon the law of the domicil;" and this was the *ratio decidendi* of the case.

In this country the view generally held is that expressed by Chief Justice Gray in Commonwealth *v.* Lane:[1] —

> "What marriages between our own citizens shall be recognized as valid in this Commonwealth is a subject within the power of the legislature to regulate. But when the statutes are silent, questions of the validity of marriages are to be determined by the *jus gentium*, the common law of nations, the law of nature as generally recognized by all civilized peoples. By that law, the validity of a marriage depends upon the question whether it was valid where it was contracted; if valid there, it is valid everywhere."

Some tendency to depart from this doctrine is shown in a few cases; but they follow Brook *v.* Brook, and are to be explained upon the same ground, namely, that the marriage was in fraud of the law of the domicil.

To sum up the rules as to capacity to marry: On the continent of Europe capacity is usually governed by nationality, though in administering the rule the courts favor their own citizens; in England it is governed by domicil, and in America by the *lex loci*.

So much for the simple question of capacity; the problem becomes complicated when two countries are interested in the matter. Suppose a French man and woman, both domiciled in England, are married in Massachusetts: by the French law their capacity to marry is to be determined by France; according to the English doctrine, by England; according to the Massachusetts rule, by Massachusetts. Or suppose a Frenchman marries a Massachusetts woman in England: the states concerned would not agree

[1] 133 Mass. 458.

by what law the capacities of the parties are to be regulated. Obviously the validity of the marriage ought to be regarded in the same way by all the countries concerned; it would be a shocking and immoral thing if the parties might be considered at one moment married, so that the husband could insist upon his marital rights, and at another time unmarried, so that the relation existing between them would be illegitimate. But if one law is to govern the marriage which shall it be?

The American rule, according to which the capacity of all parties is governed by the law of the place of celebration, avoids the difficulty, without injustice to any party, and without discouraging marriage by interposing any risk of nullity because of some unsuspected provision of a foreign law. Sir Creswell Creswell, in Simonin *v.* Mallac, already cited, forcibly stated the advantages of this rule: —

"Which would be for the common benefit and advantage in such cases as the present, the observance of the law of the country where the marriage is celebrated, or of a foreign country? Parties contracting in any country are to be assumed to know, or to take the responsibility of not knowing, the law of that country. Now, the law of France is equally stringent whether both parties are French, or one only. Assume, then, that a French subject comes to England, and there marries without consent a subject of another foreign country, by the laws of which such a marriage would be valid, — which law is to prevail? To which country is an English tribunal to pay the compliment of adopting its law? As far as the law of nations is concerned, each must have an equal right to claim respect for its laws. Both cannot be observed. Would it not, then, be more just, and therefore more for the interest of all, that the law of that country should prevail which both are presumed to know, and to agree to be bound by? Again, assume that one of the parties is English, would not an English subject have as strong a claim to the benefit of English law as a foreigner to the benefit of foreign law? But it may be said that, in the case now before the court, both parties are French, and therefore no such difficulty can arise. That is true; but if once the principle of surrendering our own law to that of a foreign country is recognized, it must be followed out to all its consequences. The cases put are, therefore, a fair test as to the possibility of maintaining that, by any *comitas* or *jus gentium*, this court is bound to adopt the law of France as its guide."

In countries which govern capacity by the national law of the parties, some working rule must be found to dispose of the case where the parties have different national laws. In Italy it is provided that if either party is incapable by his own law there can be

no marriage.[1] This rule, also, if everywhere adopted, would give a uniform test for the validity of marriages, though it has the disadvantage of favoring invalidity rather than validity. The German doctrine, according to von Bar[2] and Savigny,[3] was that the law of the husband's domicil determined the validity of the marriage; but in the Code of 1900 the German law appears to have been brought into agreement with that of Italy.

Other countries hold a harsher view. Thus, if either party is subject to the French law, that law is applied in the French court, even to the nullifying of a marriage to the harm of an innocent foreigner. Such is the famous case of the Princess de Bauffremont. The Princess, having obtained a judicial separation from her husband in France, became naturalized in Saxe-Altenburg. There a judicial separation granted in a Catholic country is regarded as equivalent to a divorce. She accordingly, without further proceedings, married the Prince de Bibesco, a Roumanian, the marriage being valid by the law of Saxe-Altenburg. The Prince de Bauffremont instituted a suit in the French courts to have the marriage declared null; and all the courts successively so pronounced it.[4] It was admitted that she had the right, after the separation, to acquire a new domicil; though her right to change her nationality without her husband's consent was denied. But the Court of Paris held that "she could not be permitted to invoke the law of the state where she had obtained her new nationality, to avoid the application of the French law, which alone governs the effect of the marriage of its subjects, and declares the tie indissoluble;" while the Court of Cassation remarked, that "acts thus done in fraud of the French law, and in despite of obligations previously contracted in France, could not be set up against the Prince de Bauffremont."

A similar question arose in an Austrian case.[5] One Marie K., married to an Austrian, obtained a judicial separation; she thereupon went to Hungary, was received into the Unitarian Church, was naturalized there, and married another Austrian whose religious and political experience was similar. The first husband instituted a suit in Austria to invalidate the Hungarian marriage;

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[1] 7 Clunet 343. This is also held in France as to a marriage between foreigners in France. 7 Clunet 300.

[2] Internat. Privat- und Strafrecht, sect. 90.

[3] Syst. des Heut. Röm. Rechts, vol. iii. sect. 379.

[4] Dalloz, 1878, ii. 1; 1878, i. 201; Beale's Cases 99.

[5] In re W's Marriage, 25 Clunet 385, 1 Beale's Cas. 428.

but pending a decision he also became a Hungarian Protestant, obtained a divorce, and married again. The Supreme Court, in spite of this defection of the plaintiff, held Marie's second marriage invalid. The husband, the court said, was still an Austrian citizen at the time of the second marriage of his wife, and both he and the second husband possessed landed estates in Austria. "Her second marriage was therefore null, according to the terms of §§ 62 and 111 of the Civil Code, in all countries governed by the Austrian Civil Code."

The same doctrine was applied in England in the case of Sottomayor *v.* De Barros.[1] Two cousins, of Portuguese nationality and within the prohibited degree of consanguinity according to the law of their country, were married in England. The Court of Appeal, believing both parties to have been domiciled in Portugal, held the marriage invalid. On a subsequent hearing in the Probate Division one party was found to have been domiciled in England at the time of the marriage, whereupon the Court held the marriage valid. The other party was domiciled in Portugal, which regarded the parties as incompetent; and in the converse case the English court (as is clear from their opinions, and from the case of Brook *v.* Brook) would have held the marriage invalid.

These cases all contemplate the possibility of a marriage being held good in one country and invalid in another, "a prodigious and monstrous thing." This is the natural, if not the necessary result of determining personal capacity by the proper law of the parties: a doctrine which France complacently regards as a vast improvement on her ancient and antiquated rule of regulating marriages by the *lex loci*.[2] Let us be thankful that the practical good sense of the Common Law has caused us to adhere to the ancient doctrine, and thus make such prodigious monstrosities uncommon with us.

The harshness of the European doctrine is somewhat modified by the fact that not all cases of incompatibility result in absolute nullity. Nullity caused by incapacity of parties may be (as with us) absolute; as where the defect is infancy, bigamy, or incest. Such marriages are avoided by decree of the court.[3] But other nullity is simply relative. Such, for instance, is that caused by failure to accomplish *actes respectueux*, that is, the formal notifica-

[1] 3 P. D. 1; 5 P. D. 94.

[2] "Ces idées surannées." Pandectes Françaises, Répertoire, Mariage, 13856.

[3] D'Hérisson *v.* d'Hérisson (Cass. 1833), Sirey, 1833, i. 195; Jour. du Palais, 1833, i. 530; Dalloz, 1833, i. 129.

tion to parents. Parties who have neglected the provisions of the law in this respect are incapable; but the marriage may, nevertheless, be valid, provided no fraud was intended by the parties upon their national law.[1] Thus in the case of Lhermite *v.* Choisi,[2] where a Frenchman domiciled in Louisiana had there married a Frenchwoman, omitting the *actes respectueux*, had lived with her for several years, and had a child whose legitimacy was attacked in this action, the Tribunal of the Seine said: —

"His union, surrounded by the formalities required in that country, was not clandestine, and in the eyes of every one gave him at once the quality of legitimate husband of Madame Verheydt-Deveux. Under these circumstances it is impossible to find that Choisi, who had reached the age when he could marry without his mother's consent, had the fixed intention, in failing to have *actes respectueux* notified, of concealing his marriage from the French public, and of perpetrating a fraud upon his national law. . . . In such a situation the tribunal would commit an inconceivable excess of rigor, in spite of the wrongs of Choisi towards his family, if it allowed an action which would do so profound an injury to the status of a young girl, a minor, who has up to this time enjoyed the privileges of a legitimate child."

So where the incapacity is caused by failure to obtain consent of parents, nullity will be decreed only if the parents seasonably object; if after the marriage they accept the situation or fail to object within a limited time, and especially if they expressly recognize it, the marriage is valid to all intents.[3] And so if the parties openly and for a considerable time have "possession of the status" of spouses, their marriage will not be nullified at private suit.[4]

Even if the marriage is really null, it exists in full force until actually nullified by judicial decree; and the court can be set in motion only by a party to the marriage or a relative or other person interested or, in case of a prohibited or clandestine marriage, by a public official. And an innocent party, who has entered into the marriage in good faith without knowledge of the incapacity, is protected to a certain extent by the doctrine of putative marriage.

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[1] D'Hérisson *v.* d'Hérisson, *supra;* B. *v.* D. (Brussels 1898), Pasic. Belge, 1899, iii. 261. If there was a desire to evade the national law, the marriage will be null. Anon. (Austria 1892), 30 Samml. von Civ. Entsch. 229, 21 Clunet 1074; B. *v.* B. (Paris 1898), 26 Clunet 799.

[2] 27 Clunet 350, 2 Beale's Cas. 105.

[3] D'Hérisson *v.* d'Hérisson, *supra;* Joureau *v.* Celarié (French Cass. 1875), Sirey, 1875, i. 171; Journal du Palais, 1875, 397; Dalloz, 1875, i. 482.

[4] D'Hérisson *v.* d'Hérisson, *supra;* Joureau *v.* Celarié, *supra;* Lhermite *v.* Choisi, *supra.*

As a result of this doctrine, children of such marriage, conceived while one party acts in good faith, are legitimate, and as to an innocent party the putative marriage has the properties and effects of a real marriage. In the case of a Frenchman marrying abroad a foreigner ignorant of his incapacity by his own law, the foreigner would therefore be protected in her rights of property and her children would be held legitimate on the ground that the marriage is a putative one. For "though one is held to know the law of his own country, one cannot be required to know the difficulties presented by a foreign law." [1] As the court of Bordeaux said in such a case, "The marriage having been contracted in good faith by the spouses, or at least by Victoria Fischer, who is not charged with knowledge of the laws of a foreign country, would produce in every respect the civil results of marriage in her favor and in favor of her children." [2] In Abazaer-Lhérie *v.* Dunsday-Lhérie,[3] a Frenchman, married to the plaintiff, met an American girl, the defendant, at Milan and elsewhere, and fell in love with her. She knew of his marriage. He obtained naturalization in Transylvania, joined the reformed church there, and obtained a divorce. The defendant, knowing of the divorce and believing it valid, married him in Transylvania. The plaintiff prayed that the marriage be declared null; and the court so held, on the ground that his naturalization was a fraud on the French law and his divorce invalid. The court also held, however, that the defendant had acted in good faith, and therefore that the marriage was putative.

But the court will not always be so merciful toward the mistake of a foreign spouse. In the case of Baux *v.* Countess R.,[4] a Belgian had married in New York, without obtaining his parents' consent, a young American girl who had been educated in a French convent. The mother of the husband, after his death, brought suit to have the marriage declared null, and the Court of Brussels so declared it. The wife claimed that she had acted in good faith, and that the marriage was putative. The court said: —

"The appellant, though an American, is of French descent; she has

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[1] Fernex *v.* Floccard (Chambéry, 1870), Sirey, 1870, ii. 214; Jour. du Palais, 1870, 895; Dalloz, 1869, ii. 188.

[2] Charvin *v.* Charvin (1850), Sirey, 1852, ii. 561; Jour. du Palais, 1851; ii. 136; Dalloz, 1853, 2, 178.

[3] Dalloz, 1890, ii. 88 (Paris, 1887); see also d'Argentré *v.* de Bosmelet (Rouen, 1887), Dalloz, 1889, ii. 17.

[4] Pasicrisie Belge, 1888, ii. 97 (1887).

received a rather complete French education; she was born November 16, 1862, and was therefore twenty-two years old at the time of the marriage; she has twice made long visits in Paris; and under these conditions it is impossible to admit that she could have been ignorant of the fact that René de R. could not marry without his mother's consent. The least experience with European usages is enough to show the difference in this respect between the law of the United States of America and that of France and Belgium."

In view of the principles and cases considered, it is quite unsafe for an American to marry a foreigner without a complete investigation of his capacity to marry according to his personal law.

J. H. Beale, Jr.